

**REPORT - PLANNING COMMISSION MEETING**  
**August 28, 2003**

**Project Name and Number:** Catellus Development Agreement for Pacific Commons PLN 2003-00311

**Applicant:** Catellus Development Corporation

**Proposal:** To consider a City Manager's report on the annual review of the Development Agreement

**Recommended Action:** Find the applicant in compliance with the Development Agreement

**Location:** Westerly of I-880, between Auto Mall Parkway and Cushing Parkway

**Assessor Parcel Number(s):** 531-185-5-7, 531-185-4-5, 525-1326-3, 525-1326-5, 525-1326-6, 525-1326-8, 525-1326-7-1, 525-1326-9, (Vesting Tentative Map Tracts 7200 and 7480 )

**Area:** Approximately 822 acres

**Owner:** Catellus Development Corporation

**Agent of Applicant:** Dan Marcus, Senior Vice President

**Consultant(s):** None

**Environmental Review:** Draft and Final Supplemental EIR certified by the City Council in May of 2000 and addendum to the Supplemental EIR approved by the City Council on July 15, 2003 (PLN 2002-214) covers the current project. This review is not a project as defined in the CEQA Guidelines, Section 15368, no further action is required and none of the conditions of CEQA Guidelines Section 15162 requiring additional environmental documents exist.

**Existing General Plan:** Restrictive Industrial, with Commercial Industrial Overlay, Institutional Open Space (wetlands), Institutional Open Space (Park, Transit Center, Water Quality Ponding Facility), Bay Trail

**Existing Zoning:** Planned District (P2000-214 as revised by PLN2002-00263 and PLN2003-00116)

**Existing Land Use:** Industrial, vacant, wetlands

**Public Hearing Notice:** Public hearing notification is applicable. A total of 237 notices were mailed to owners and occupants of property within 1000 feet of the site on the following streets: Auto Mall Parkway, Christy Street, Boyce Road, Auto Mall Circle, North Port Loop, Enterprise Street, Davenport Place, Hanover Place, Industrial Drive, Brandin Court, Randall Place and Boscell Road. The notices to owners and occupants were mailed on August 15, 2003. A Public Hearing Notice was delivered to The Argus on August 11, 2003 to be published by August 14, 2003.

**Executive Summary:** On May 9, 2000, the City Council approved a Development Agreement between the City and the Catellus Development Corporation. The Development Agreement requires Catellus to submit a compliance evaluation for an annual review of the agreement to determine whether the firm is in compliance with all obligations required to be performed during the one year review period. This report to the Planning Commission concludes that Catellus was in compliance with the Development Agreement in the 2002-2003 review period and recommends the Planning Commission find Catellus to be in compliance.

**Compliance Issues:** While several changes to the project relating to retail uses have occurred since the Development Agreement became effective, those changes do not affect the compliance obligations required of Catellus. The specific obligations to be addressed in Catellus' compliance evaluation are:

1. the construction status of Cushing Parkway and Pacific Commons Boulevard;
2. the City purchase of the Municipal Parcel (a 47 acre parcel at the northwesterly corner of the project, a potential site for a City park, surface water quality facility, and multimodal transit facility);
3. the City purchase of the Stevenson Parcel (an approximately 2 acre parcel at the westerly terminus of Stevenson Boulevard for a potential indoor police firing range or other city purpose);
4. status of a Business Conference Center to be located along Christy Street near Interstate 880 or other location; and
5. the status of the Fire Station Note.

*Construction of Cushing Parkway and Pacific Commons Boulevard:* The Development Agreement (Exhibit G, Section 2.3) establishes a timetable for start of construction for two segments of Cushing Parkway. The City extended the deadline for commencing construction on the northerly segment to October 1, 2001. Construction on the southerly segment began on June 10, 2002. Construction of both segments was to be completed by June 30, 2003. On July 22, 2003, the City Council approved an amendment of the Development Agreement recommended by the Planning Commission on June 26, 2003, to extend the deadline for completion and acceptance of Cushing Parkway to January 1, 2004 (with Cushing Parkway to be open to traffic no later than October 1, 2003). The Development Agreement amendment also gave the City Manager the authority to grant an additional 90 day extension of the deadline upon showing of a good cause for such extension. Catellus had no other Development Agreement obligation relative to Cushing Parkway during this review period. In regard to Pacific Commons Boulevard, Condition 46 of the Planned District states that the City is not obligated to approve building permits beyond three million square feet until the developer has commenced the construction of the first segment of Pacific Commons Boulevard. This condition was included to reflect City interest in realizing this very important transit/pedestrian centered street as soon as possible. However, because building permit issuance had not yet reached the three million square foot threshold during the review period, the potential impact on building permit issuance was not triggered.

*Municipal Parcel:* Article 3 of the Option Agreement refers to the Municipal Parcel as a 47- acre area at the northwesterly corner of the project site for a potential site of a City park, flood control facility and transportation center. The exact acreage to be acquired by the City was dependent on the amount needed for flood control and water quality facilities. In its compliance report to the Planning Commission on August 9, 2001, Catellus reported that the City purchased a 40.48 acre portion of that parcel for a municipal facility. Catellus had no Development Agreement obligation related to the parcel to be performed during the 2002-2003 annual review period.

*Stevenson Parcel:* Article 2 of the Option Agreement requires Catellus to grant to the City the exclusive right to purchase for one dollar, approximately 2 acres of a parcel at the westerly terminus of Stevenson Boulevard, known as the Stevenson Parcel for a municipal purpose. An indoor police firing range was discussed as a potential use for the site at the time of project approval in 2000. The time frame for the purchase was the lifetime of the Development Agreement or a lesser time described in the agreement. The City has not yet purchased the parcel. There is no Development Agreement provision to require sale of the parcel to the City during the timeframe of this review.

*Business Conference Center:* Article 4 of the Option Agreement provided for the City acquisition of two parcels (3 acres and 5 acres) for a Business Conference Center. The original Option Agreement contained two "preference" areas where the Center might be located (subsequent amendments changed the location of those parcels). The amendment to the Development Agreement recommended by the Planning Commission on June 26, 2003 and approved by the City Council on July 22, 2003, essentially eliminates the provision for the Conference Center parcels upon the issuance of a building permit for retail use; exchanging the value of the parcels for a combination of a contribution of \$500,000 to the General Fund by Catellus and a credit of \$500,000 to Catellus in a "Retail Enhancement Fund" to attract retailers generating substantial sales tax revenues. (PLN2003-0166).

*Fire Station Note:* The 2000 Fire Station Note was an agreement in which Catellus would pay the City \$1,212,000 over six years to help defray the cost of constructing Station 11. The Note also required Catellus to pay the City additional money related to the difference between the estimated market value of the land purchased for Fire Station 11 outside of the project area and the value of the industrial land Catellus agreed to provide in the 1996 agreement (referred to as the

contingent amount). The difference was to be credited to the City in its purchase of the Municipal Parcel. The City purchased the Municipal Parcel in 2001 with \$1,620,432.00 (the contingent amount) credited to the purchase. In the 2000 Development Agreement, the \$1.2 million for defraying the cost of fire station was due in six annual payments commencing ninety days after the station is providing full fire protection services. An amendment to the Development Agreement to reduce the payment by \$202,000 by eliminating the sixth year payment was considered by the Planning Commission on June 26, 2003 and approved by the City Council on July 15, 2003, with the equivalent value of the sixth year payment added to the "Retail Enhancement Fund". The fund is discussed in the Business Conference Center of this report.

The timing of fire station construction is dependent on development activity in the area.

Catellus had no obligation to perform during the review period in respect to the Fire Station Note.

**Environmental Analysis:** Section 3.3 of the Development Agreement requires use of the project Supplemental EIR approved by the City Council in May of 2000 for future approvals, unless an environmental review is required by (among others), the California Environment Quality Act and Guidelines. That Supplemental EIR has been used for various approvals since the project was approved in May 2000. An addendum to the Supplemental EIR for the latest retail area amendment to the project was approved by the City Council on July 15, 2003. The action required of the Planning Commission is an annual review of the development agreement for compliance, not a project that might have environmental impact as defined by CEQA Guidelines, Section 15163. Therefore, no additional environmental documents are required.

**Mitigation Monitoring Reporting Plan:** A mitigation monitoring and reporting plan (MMR) was approved by the Assistant City Manager. The MMR lists every mitigation measure required by the City and other public agencies, identifies the time at which the mitigation measure is to occur, the responsible agency for approving the mitigation measure and a signature line for City staff to complete when the mitigation measure is fulfilled. Each year, the applicant submits a status report on mitigation measures. The status report lists those project mitigation measures that require formal approval. For each mitigation, the status report indicates whether the mitigation is completed (and refers to the evidence to support that statement), not completed or an ongoing activity that will be required until the project is completed. When staff determines that a required mitigation activity is complete, the Mitigation Monitoring Report item is signed off by the City Engineer or Senior Planner. A copy of the updated Mitigation Monitoring Report is enclosed in the Commission's packets as an informational item only.

**Conclusion:** Staff believes Catellus is in compliance with the provisions of the Development Agreement for the 2002-2003 review period. Under the provisions of the Fremont Municipal Code, if the Planning Commission finds the developer to be in compliance, the review is completed. If the Planning Commission, finds and determines on the basis of substantial evidence the property owner has not complied in good faith with the terms and conditions of the agreement during the period of review, the Planning Commission must forward its recommendation to the City Council. The City Council may modify or terminate the agreement.

**Response from Agencies and Organizations:** None

**Enclosures:** Compliance Evaluation form submitted by Catellus, dated May 29, 2003; Mitigation Monitoring Report as revised January 8, 2003 including signoff of completed requirements as of August 2003.

**Exhibits:** None

**Informational:** General Plan and Zoning maps.

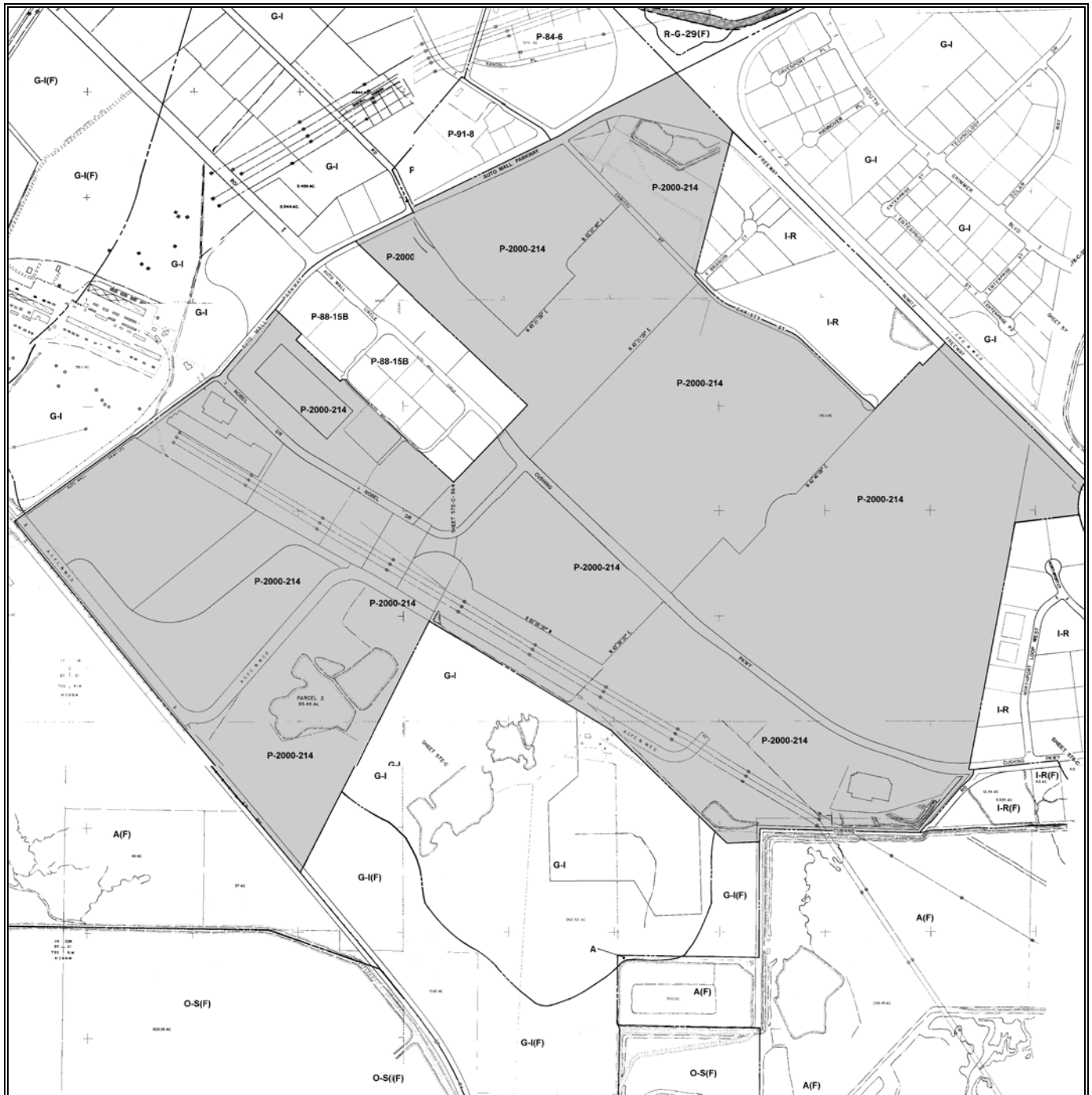
**Recommended Actions:**

1. Hold public hearing.
2. Find the annual review of the Development Agreement is not a project as defined in CEQA Guidelines Section 15168 and that no further environmental document is needed for this review.

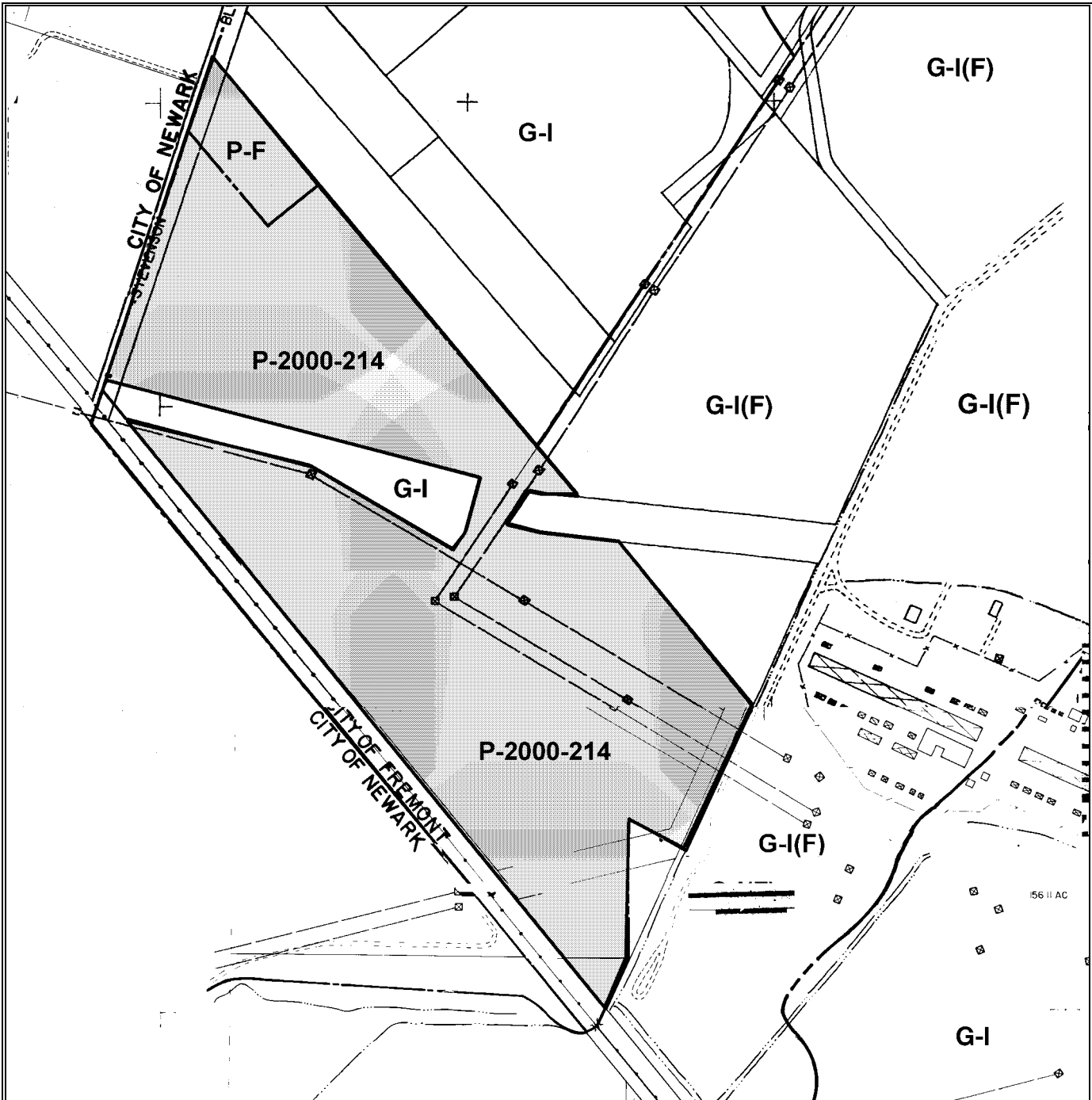
3. Find and determine on the basis of substantial evidence in the record of the proceedings, that for the review period of 2002-2003, the Developer has complied with its Obligations under the 2000 Amended and Restated Development Agreement between the City of Fremont and Catellus Development Corporation for the Pacific Commons Project.

# Existing Zoning

Shaded Area represents the Project Site



Existing Zoning (Stevenson Blvd parcel)



## Existing General Plan



Existing General Plan (Stevenson Blvd parcel)

